

#### Speech of Mr. Baldwin.

On the final passage of the bill to incorporate the State Bank of Ohio and other Banking Companies—In Senate, January 13, 1845.

#### A CONSTITUTIONAL ARGUMENT.

MR. SPEAKER:

The lateness of the hour, the length of time this discussion has been protracted and the impatience of the majority, all admonish me that I should consume but little time in submitting my closing remarks. The deed is to be consummated, and this bill with all its abominations is to pass this branch of the Legislature, and most likely become a law of the State. The minority cannot prevent it. We have done all in our power to avert the evil, but in vain. We have presented amendment after amendment, and submitted proposition after proposition, calculated to modify and improve the bill—to put such safeguards, balances and checks about the bankers as would be some security to the people, but these have failed. We have endeavored to reduce the capital and circulation authorized, to a point that would be bounded by the limits of safety—that would not inundate the State with a paper circulation, and bank discounts to an extent calculated to unsettle the entire business of the State, and utterly destroy the industrial pursuits of our people—but these endeavors have proved futile and unavailing. The majority, as if spell-bound and verging to destruction themselves, have closed their eyes to facts, and their ears to argument and reason, and rushed forward as though they wished to plunge the State and her interests into the same gulf to which they are hastening, and from which they will never return.

I do not propose to offer further arguments as to the expediency or dangerous tendency of this measure, but I ask the friends of this bill where they find the power to pass it? We are acting under the solemn sanction of an oath to support the Constitution of the United States, and the Constitution of the State of Ohio. However desirous gentlemen may be to establish a banking system—however useful they suppose it might be to the citizens of the State, they surely do not wish to establish it at the expense of violating the constitutions they have sworn to support. This I do not believe they desire to do. I then raise that question for your consideration. If the power is given by the constitution to incorporate banks to issue paper to be used as money, you can point it out. It is not a sufficient answer to this question to say that others have exercised this right before us—that good men who had taken the same oath have incorporated banks of issue. Our oath is to support the constitution of the United States and of this State—not to do as others have done before us. Let us then look to these constitutions and see what are our rights and our duties. Let us look first at the constitution of Ohio, and see whether it confers on the Legislature unlimited powers: The 28th section of the 8th article is in these words: "To guard against the transgression of the high powers which we have delegated, we declare that all powers not hereby delegated remain with the people." From this section it is clear that our constitution is a *delegation* of powers, and that as representatives acting under that constitution, and sworn to its support, we cannot incorporate a bank, unless by the terms of the instrument itself the power is conferred upon us. Let us now see what power there is given to us to grant acts of incorporation. The only allusion to the subject to be found, from the beginning to the close of the constitution, is in Sec. 27 of Art. 8, and is in these words: "That every association of persons, when regularly formed, within this State, and having given themselves a name, may, on application to the Legislature, be entitled to receive letters of incorporation, to enable them to hold estates, real and personal, for the support of their schools, academies, colleges, universities, and for other purposes." The uses for which acts of incorporation are to be granted are enumerated. They are to enable the incorporators "to hold estates real and personal," not for purposes of banking or issuing paper money, but "for the support of their schools, academies, colleges," and "universities." It is true the words "and for other purposes," are added, but can you from these words enlarge the grant? I apprehend you cannot. It is a correct and conceded rule in construing grants of power, if all that is intended to be granted is not enumerated, to consider the more important as being named, and the minor or less important as embraced in the general clause. To change this rule would do violence to every just principle of construction, and the plainest dictates of common sense. Apply that rule to the section under consideration and what would be the just inference? It would be that the constitution gives us the power to incorporate companies for the support of schools, academies, colleges, universities, and such other objects as are of less importance than these. Now, will gentlemen contend that companies vested with power to do a banking business to the amount of millions of dollars, and to issue paper to the amount of twenty-one millions of dollars to circulate as money, are of less importance than companies formed for purposes of education? If they will not, then you have no power under the constitution to incorporate them. I do not charge the majority with a wilful and deliberate intention to violate the constitution and their oaths of office. Far from it. But if I am correct in my views, they will do it in the passage of this bill, even though they should be unconscious of it.

If I should rest my argument here, I have certainly made a case that should induce careful men to hesitate—but the argument does not stop here. We are also to support the constitution of the United States, which is acknowledged to be the supreme law of the land. Let us look at it, and see what provisions it contains in relation to this subject. It contains an enumeration of the

powers to be exercised by the federal government, and of those prohibited to the States. The powers prohibited to the States, are enumerated in the tenth section of the first article of the constitution, and are in these words:

"No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any titles of nobility."

None of the several things in this section named can be done by the States, without a violation of the constitution, and if done would be null and void. A State cannot "emit bills of credit." If the paper you propose to issue through your banks are bills of credit, you have no right to emit them, and the acts will be void and of no binding force. The question then is, what is a bill of credit? Upon the settlement of that question rests the constitutional power of the States to charter banks of issue. As I am a young man, the majority would look upon it as presumption in me to attempt to define this term, and as I have higher authority, I prefer giving it. This question has been settled by the highest judicial tribunal in our government, by the Supreme Court of the United States, in the case of *Craig* and others against the State of Missouri, and will be found in the 4th volume of *Peters' Reports* pages 431 and 432. In delivering the opinion of the court in that case, Chief Justice MARSHALL covers the whole ground, and I prefer letting him speak. He says:

"The clause in the constitution which this act is supposed to violate is in these words: 'no State shall' 'emit bills of credit.'"

"WHAT IS A BILL OF CREDIT? What did the constitution mean to forbid?"

"In its enlarged, and perhaps literal sense, the term 'bill of credit' may comprehend any instrument by which a State engages to pay money at a future day; thus including a certificate given for money borrowed. But the language of the constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the interpretation of the terms. The word 'emit,' is never employed in describing those contracts by which a State binds herself to pay money at a future day, for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes in common language denominated 'bills of credit.' To 'emit bills of credit,' conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes as money, which paper is redeemable at a future day. This is the sense in which the terms have been always understood."

"At a very early period of our colonial history, the attempt to supply the wants of the precious metals, by a paper medium, was made to a considerable extent; and the bills emitted for this purpose, have been frequently denominated bills of credit. During the war of our Revolution, we were driven to this expedient, and necessity compelled us to use it to a most fearful extent. The term has acquired an appropriate meaning, and 'bills of credit,' signify a paper medium, intended to circulate between individuals, and between government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States, and which deeply affected the interest and property of all, the people declared in their constitution, that no State should 'emit bills of credit.' If the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of any paper medium, by a State government, for the purpose of common circulation."

This decision meets the question fairly and fully. It says the term "bills of credit" has acquired an appropriate meaning, and that they "signify a paper medium intended to circulate between individuals, and between government and individuals for the ordinary purposes of society." The true cause of that provision being inserted in the constitution is given, viz: the issuing of such bills during the "early period of our colonial history," and "during our war of the revolution"—that their "value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculation and destroy all confidence between man and man," and that "TO CUT UP THIS MISCHIEF BY THE ROOTS" "the people declared in their constitution, that no State should emit bills of credit"—that "if the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of ANY PAPER MEDIUM by a State Government, for the purpose of common circulation." You have not the power under the constitution as expounded by the highest judicial tribunal in our government, to issue and put in circulation any paper medium, while your bill provides for issuing and putting in circulation more than twenty millions of dollars of that kind of paper. Can you vote for the bill without a violation of the constitution? You cannot evade this, by saying you do not issue the paper directly by the State but indirectly by the banks.—You cannot delegate a power which you do not yourselves possess. If you cannot, under the constitution, issue paper for circulation, how can you delegate that power to others? You have first to seize it yourselves in utter violation of your oath of office, before you can delegate it. Will it be more sacred in the hands to which you confide it, than in your own? Can you convey a title which you do not possess? The decision I

have read is conclusive against the right of the State to issue such a circulation, and if she could do indirectly what is directly forbidden, the whole object of that provision of the constitution would be evaded. The object of the framers of the constitution was to avoid a recurrence of the evils that had resulted from paper issues intended to circulate as money in the ordinary transactions of business, but if that clause does not prohibit the States from delegating the power to others to issue such paper as well as to prohibit them from issuing it by their own officers, then it is a useless provision, and their object has failed. Can the State delegate a power she does not possess? If she cannot, you have no power to incorporate a bank to issue paper to circulate as money. Gentlemen need not startle at this proposition. It is true that it involves the legality of all the paper issues in the United States, should it be applied and enforced; but I am not striving to apply it to existing institutions. If it should ever become necessary to make the application, I have no doubt the result would be in favor of the view I have taken. But we are now about to exercise or usurp this power, again to infuse vitality into some seventy or eighty new corporations, and no time could be more proper for raising the question. If these acts are unconstitutional and utterly void, now is the time to pause in our career, when we have but few banks, and would suffer but little from its application to our State.

As I said at the commencement, precedent can never justify us in violating the constitution which we are sworn to support. But upon the point of whether we have the power to delegate to others the right directly prohibited to ourselves, I have some authority. It is one Daniel Webster, of whom you all have some knowledge; and whatever you may think of him as a man and a politician, no one doubts that he is a profound lawyer. I read from his speech delivered in the Senate of the United States on the 25th day of May, 1832, on the bill for the renewal of the charter of the Bank of the United States. He says:

"The generality and extent of the power granted to Congress, and the clear and well defined prohibitions on the States, leave little doubt of the intent to rescue the whole subject of currency from the hands of local legislation, and to confer it on the General Government. But, notwithstanding this apparent purpose in the constitution, the truth is, that the currency of the country is now to a very great extent practically and effectually under the control of the several State governments, if it be not more correct to say that it is under the control of the banking institutions created by the States; for the States seem first to have taken possession of the power, and then to have delegated it. Whether the States can constitutionally exercise this power, or delegate it to others, is a question which I do not intend at present either to concede or argue. It is much to be hoped that no controversy on the point may ever become necessary."

Here Mr. Webster speaks of "the clear and well-defined prohibitions of the States," and says it "leaves little doubt of an intent to rescue the whole subject of currency from the hands of local legislation"—thus backing up the opinion of the Supreme Court—and adds, "the States seem first to have taken possession of the power, and then to have delegated it." Mark how emphatic the language in the next sentence, and how clearly and explicitly it bears upon the point. Whether the States can constitutionally exercise this power, OR DELEGATE IT TO OTHERS, is a question which I do not intend at present either to concede or argue. In this, he only takes the view that must force itself upon every reasoning mind—and that is, that the States can neither exercise the power, or delegate it to others. But in view of the palpable violation of the Constitution by the States, in authorizing banks to issue paper for circulation, and the certainty that the Court would pronounce the whole unconstitutional and void, he exclaims, "It is much to be hoped that no controversy on the point may ever become necessary." Why should he hope for that, if he was not satisfied that the whole brood of bank issues were unconstitutional, and would be declared void by the Court? The conclusion is unavoidable. Again, I ask; will Senators refuse to look at this constitutional question? Will they fail to explain the position they occupy? I have shown that if you incorporate these banks, you do it in violation of the constitution of Ohio—or claim the power by a departure from long and well established principles of construction—that the constitution of the United States is the supreme law of the land—that it prohibits any State from emitting bills of credit—that the Supreme Court of the United States has defined a bill of credit to be, "a paper medium intended to circulate between individuals, and between the Government and individuals, for the ordinary purposes of society"—that it was to "cut up this mischief by the roots," that the framers of the constitution provided that no State should "emit bills of credit,"—that as the State cannot exercise the power herself, she cannot delegate it to her citizens, and that Daniel Webster sustains this view of the subject. If these facts will have no influence on your minds, then, indeed, are you proof against all facts and reason.

If this bill passes, in utter violation of all the dictates of prudence, the wants of the people or State, and of the state and national constitution—then will an outraged people be justified in raising the question before the proper Court, and have the whole spawn of banks and their issues pronounced unconstitutional and void. Let bankers be forewarned, and examine this question before they make their investments. This is a great question of freedom or slavery to our people for the next quarter of a century; and a mighty people, jealous of their rights, will not slumber at their posts. If Shylocks, money shavers and bank plunderers, expect to

run riot over our constitutions, and eat out the substance of our people, they will find they have selected the wrong age to consummate their purposes. The slumbering fires of freedom will be fanned to a flame, and the usurpers will be consumed like dross in the furnace. Ours are a people who know their rights, and, knowing, dare maintain them. I indulge in no such gloomy anticipations as have been expressed by some of my political brethren. If the bill passes, the people—who are the source of all political power, are pure, and cannot be corrupted by bank bribes or bank loans—will be avenged of those who would enslave them, and will carry this question at once to the proper Court. But should justice slumber there—should "technical quibbles" for a time produce delay, they will lay their hands upon their recreant servants here, and hurl them from power. They will also raise the standard of "REPEAL," and "in this sign they will conquer." *Repeal, REPEAL*, will be the rallying cry—the watchword of an honest and outraged people, and they will triumph. My own motto shall be, the repeal of the law, and a vindication of the constitution; and I here pledge myself, that if life and health are preserved, I will not sign a "truce" until both are accomplished.

"I see what you're after," said a full-blooded whig the other day to an old friend who had lately turned democrat: "I see what you're after—'tis the loaves and fishes."

"Just so," said our friend; "brown bread loaves and cod fishes, if you please."

"Well," returned whiggy, wishing to say something, and not knowing what else to say, "that's a good living."

"Why pretty, good!" said the democrat; "not quite so good as that roast beef, but rather more of it."

Whiggy sloped.

#### PETITION FOR DIVORCE.

Robert Wakes, et al.  
Caroline Wakes, will take notice, that the complainant, on the 20th day of February, A. D. 1845, filed in the office of the Clerk of the Court of Common Pleas, for the county of Paulding and State of Ohio, his petition, praying that the marriage contract now existing between them be dissolved, and that he be forever divorced from her: causes alleged, adultery and gross neglect of duty; and also that depositions of witnesses will be taken in the above cause by the complainant, at the house of Peter Myers, in the township of Perry, in the county of Putnam and State of Ohio, on the 22nd day of March, A. D. 1845, between the hours of twelve A. M. and 6 o'clock, P. M.  
ROBERT WAKES, Complainant.  
February 23d, 1845. 6w211

#### ASSOCIATED AGENCY.

Central office 20 Wall-st. New York.

#### OBJECT AND PLAN OF ORGANIZATION.

Benevolence, far from being confined to acts of gratuitous relief to the destitute and suffering, may be more beneficially employed in providing the means whereby all classes may be enabled to avail themselves of the bounties of a kind Providence, and become established in a condition of competency and comfort in return for their own industry.

Contemplating the boundless treasures of the uncultivated Forests and Prairies of America, with the fertility of the Soil, the salubrity of the Climate, and unimproved Water-Power, and in the bowels of the Earth, fine Clay, Lime, Salt Coal, Iron, Lead, Copper, Silver and Gold, we have presented to our view all the elements of Prosperity and Wealth, sufficient for hundreds of millions of the Human Race. Still we behold a vast portion of the inhabitants of the earth who are suffering for want of an opportunity to make their energies available to the supply of their own wants; and desiring to open the way for them to improve their condition in life by a wisely directed choice of a spot of earth whereon to fix their residence, we have organized an Associated Agency to collect information concerning every section of our country, and to concentrate that information in certain Offices in Europe and America, to be communicated to persons of every occupation and calling in life, that however varied may be their circumstances and wants, they may be furnished with such intelligence as will enable them to make choice of a location, where they can provide for themselves a home, in all respects congenial to their condition and desires, and, with the least possible delay, trouble or expense, establish their families in the midst of Plenty, with pleasing anticipations for themselves and their posterity.

In the hope of the successful accomplishment of this interesting design, we have established an office at No. 20 Wall street, New-York, and have formed a connexion with a number of persons who keep Real Estate Offices in the Western States and Territories.

In those offices in the West is kept a Register of Real Estate of every description which is offered for sale, and especially that of non resident proprietors, which is always the cheapest in the market, a copy of which is communicated to our office for the information of persons going to settle in the Western Country.

We have provided ourselves with the means of communicating to strangers the most authentic information concerning the Soil, Climate, Productions, Manufactures, Population, Schools, and Religious Societies of every County in the United States.

We have also established a number of Agencies in Europe and in New-England, to communicate the like information to Emigrants, and to furnish them with letters of introduction to our Office, or to those in the West.

The connexion being organized for the purpose above specified, and contemplating its extension to nearly all the Counties in the United States, and to all the principal Towns and Cities in Europe, we shall possess facilities for conducting a variety of Agency transactions, not possessed by any other body of men in the world; we propose, therefore, throughout our extensive connexion, to conduct an Agency for the following purposes:

For paying taxes and other transactions, for non-resident proprietors of Western Lands.

For procuring loans of money on bond and mortgage.

For directing emigrants on the several routes of public conveyance.

For transmitting orders, or any specific information, to or from any part of the world.

For effecting insurance against fire.

For procuring and disposing of Patent-Rights in Europe and America.

For Periodicals and other publications of general utility.

We have made an arrangement with the Proprietors of the New-York Weekly Tribune, for the circulation of that paper throughout our entire connexion. This arrangement furnishes the means of circulating any specific information, far more extensively by an insertion in this paper, than it can be done by means of any other publication. An advertisement for lost friends, or a notice of any kind, requesting the attention of these Agencies, and including an offer of a reasonable remuneration will obtain their services.

This number of the Tribune will be sent Postmasters in all the States and Territories, who are respectfully requested to hand it to some suitable persons who will be disposed to cooperate with us in the prosecution of our enterprise.

We shall be pleased with the cooperation of one Real Estate Office in each county where the transaction in real estate will sustain such an office. In counties where such an office cannot be sustained, the Postmaster at the county seat, the publisher of a newspaper, or an Attorney at Law might advantageously cooperate with us. When our arrangements are completed, we have no doubt but business will be presented which will be interesting and profitable to every individual in the connection, and to the community at large.

The conditions of Agency are:

The person proposing to act in conjunction with us must send with his name a recommendation, signed by the First Judge of the County in which he resides, or must give some other equally respectable reference, together with \$2 to pay for The Tribune, to be sent to him for one year, and \$3 toward defraying the expenses of giving extensive publicity to the organization.

Persons who keep Real Estate Offices are to contribute to the support of the organization one moiety of the commissions which they receive from the owners of Real Estate, for sales made to persons directed to them by the Agencies established for that purpose.

The offices in the Eastern States and in Europe, will be supplied with printed letters of introduction, addressed to the offices which sell Real Estate. For giving out these letters they will receive twenty-five per cent. of the commissions resulting from such introductions. In all other cases the fees and commissions will be equally shared among the persons (whether two or more) who have participated in the transaction.

All the Agencies are to report quarterly to our office, a statement of all transactions in which other offices have cooperated, when a general balancing of accounts will be struck, and drafts will be issued on the debt or offices, and the money remitted to the creditor offices.

The paper will also be sent to all the American Consuls in Europe, and to many of the European Consuls in America.—Their influential position and favorable locations will give them great advantages in promoting this enterprise. They are respectfully invited to cooperate with us.

While the leading object of this arrangement is, that individuals of every class may be beneficially served at a small expense, and in a manner absolutely impossible without such an organization, and especially, that those who wish to buy, and those who wish to sell real estate, may be brought together, to make such negotiations as shall be mutually advantageous: yet we do not profess to be a charitable association: In the plan which we have adopted, we contemplate the means of doing much good to others, while at the same time we provide for ourselves a reasonable remuneration.

The connection is strictly limited to Agency transactions. Each one acts on his own individual responsibility; and no one can under any circumstances bind another to any pecuniary liability whatever.

Further details of the plan of operations will be published in future numbers of the Tribune.

Each Agency should preserve this article for future reference.

Editors of newspapers in Europe and America, who are willing to contribute so much in aid of a practical good, are requested to make their readers acquainted with the existence and objects of this Associated Agency. All who do so, and send us a copy, will have their names registered to be remembered.

The names and address of those who unite with us in the prosecution of the enterprise will be published in the Tribune, as an introduction to each other and to the world.

#### ARNOLD BUFFUM & CO.

20 Wall-st. New York.

12th month, (December,) P. S.—A person possessing the requisite qualifications for aiding in conducting the business of this Office, with a cash capital of \$5,000 is wanted as a Partner.

We keep in this Office a Register of Lands, Farms, Houses, Mills, Mines, &c. in the States of Connecticut, New-York, New-Jersey, Pennsylvania, Maryland and Virginia. Persons having any such property for sale, are invited to send us a description of the same, with the price and terms of payment, and we will send them purchasers.

Charges, \$5 for extensively advertising, and only one per cent. commission when the sale is made.